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CONSULTATIONS ON HARMONIZATION AND IMPROVEMENT OF THE RULES OF ORIGIN

Examination of definitions of "Substantial Transformation" and implications of harmonization: Possible initiatives in regard to simplification and liberalization

Replies to questionnaire*

Report by the UNCTAD secretariat

CONTENTS

		Page
Summary		2
I.	Replies to questionnaire	3
A.	Practical problems encountered by manufacturers in seeking to produce goods to satisfy various origin rules applicable to several markets	3
B.	Comments of manufacturers and certifying authorities on the process criterion and various versions of the percentage criterion, for example comparison as to simplicity, ease of understanding and operation, restrictiveness as to use of imported materials	4
C.	Views as to harmonization	5
II.	Other comments contained in replies	6

* cf. TD/B/C.5/141, p. 23, footnote 11.

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SUMMARY

Replies to the secretariat questionnaire were received from eight preference-receiving countries. A summary of each reply is given in Section I below.

Section II contains a summary of comments made by preference-receiving countries on matters outside the scope of the questionnaire.

I. REPLIES TO QUESTIONNAIRE

A. Practical problems encountered by manufacturers in seeking to produce goods to satisfy various origin rules applicable to several markets

BOLIVIA

Manufacturers have not met with problems relating to origin rules mainly because Bolivian exports consist of "wholly produced goods".

MALTA

Manufacturer imports gold bullion for the production of gold chains. Since by its nature the bullion is high cost, its value exceeds 40 per cent of the ex-factory price of the chain. Application of various origin rules gives the following diverse results:

Canada: The chains fail to qualify since the 40 per cent limit is exceeded and neither the donor country content rule nor the cumulation rule applies.

United States: Since the bullion is accepted as having been "substantially transformed" in Malta, it is counted as of Maltese origin and the chains fulfil the United States percentage criterion.

EFTA countries and Japan: The chains satisfy the "change of tariff heading" rule and thus qualify for GSP.

Prospective investors interested in the production of goods falling in HS chapters 84 and 85 for possible export to EFTA countries find that the origin rules contain two, three or four requirements which, in the absence of "donor country content" or cumulation provisions, are too strict.

PHILIPPINES

Manufacturers of radio broadcast receivers (HS heading 8527) readily satisfy the United States percentage criterion since the direct costs of processing exceed 35 per cent of the ex-factory price. Since, however, the value of non-originating materials (usually the transistors used) exceeds the value of originating materials, the EEC rules are satisfied only if ASEAN transistors are used. However, sources of non-originating materials outside ASEAN have often to be used. These difficulties would be removed if the EEC applied global cumulation.

SRI LANKA

The process criterion rules are complex and excessively strict. One example is garments, which must be made from yarn, fibres, chemical pulp, etc. Sri Lanka does not yet have sufficient domestic supplies of yarn and a large part of textile exports (HS headings 6100, 6200, 6300 and 6505) do not qualify for GSP. Bread and pastries (HS heading 1905) is another case where EEC requires manufacture from materials of any heading except Chapter II. The main ingredient, however, falls in Chapter II. Another case concerns

figurines (HS heading 9503) made from raw materials imported from Germany and then exported to Germany. Although value-added is more than 50 per cent, GSP cannot be obtained because no change in tariff heading has occurred.

The absence of uniformity in the percentage criterion rules used by Australia, Canada, New Zealand and the United States has meant that a manufacturer who wishes to export on a GSP basis, e.g. to the United States, Canada and the EEC, is prevented by the different origin rules from doing so.

THAILAND

The existence of diverse and stringent origin rules has impeded the eligibility for GSP treatment of various products, e.g. television receivers, telephones, computers and video-tape recorders exported to the EEC and EFTA.

TURKEY AND VENEZUELA

No practical problems have arisen.

UGANDA

Such problems have not yet arisen.

B. Comments of manufacturers and certifying authorities on the process criterion and various versions of the percentage criterion, for example comparison as to simplicity, ease of understanding and operation, restrictiveness as to use of imported materials

MALTA

The percentage criterion is in principle preferable to the process criterion in terms of simplicity. The concept of "value-added" is familiar to manufacturers. Differences in the various formulations of the percentage criterion are a disadvantage. On the other hand, all versions are applied to all goods without exception.

The process criterion, although not difficult to understand in itself, has the disadvantage that it is not uniformly applied across-the-board: each item has to be checked to determine whether the "change of tariff heading" rule applies and, if not, what specific rules do apply.

PHILIPPINES

Manufacturers and customs certifying personnel find the process criterion most restrictive and complicated. By comparison, the percentage criterion requires the simple computation of the ex-factory price/cost or f.o.b. price to determine the local or foreign content.

UGANDA

The percentage criteria is simple and easily understood.

C. Views as to harmonization

1. In the case of full harmonization, which criterion is preferable?

BOLIVIA

The process criterion is preferable.

MALTA

The percentage criterion is preferred because a single uniform method of calculation would apply and the concept of "value-added" is simple to understand.

PHILIPPINES

The percentage criterion is preferred because it is simpler and more flexible in the use of imported materials.

SRI LANKA

The percentage criterion is preferable. The criterion should be import content, which should not exceed 5 per cent of the f.o.b. price of the exported product.

THAILAND

Because it imposes no restrictions on the descriptions of imported material used in manufacture, the percentage criterion is preferable.

TURKEY

The percentage criterion is preferable.

UGANDA

The percentage criterion would be preferable.

VENEZUELA

The process criterion is preferable.

2. In the case of limited harmonization, which version of the percentage criterion is preferable?

MALTA

Difficult to choose between the United States and Canadian percentage rules. The United States' rules have the advantage over the Canadian rules in regard to the treatment given to imported materials which are "substantially transformed", although that term might be more clearly defined. The Canadian rules have the advantage that provision is made for "donor country content" and full global cumulation.

PHILIPPINES

The United States' version is preferred because it allows a higher amount of imported materials. The only advantage of other versions is global cumulation.

SRI LANKA

The version used by Australia and the United States would be preferable because it includes the cost of labour as the processing cost. Canada and New Zealand exclude the cost of labour.

THAILAND

The version used by Australia, Canada and New Zealand is preferable because of its simplicity (and its liberality in application of full global cumulation and "donor country content").

TURKEY

The United States' version is preferable.

UGANDA

The United States' version would be preferable as it is easier to operate.

VENEZUELA

Import content should form the basis for harmonization.

II. OTHER COMMENTS CONTAINED IN REPLIES

BOLIVIA

As regards box 8 in Form A, only one symbol should be required. All GSP schemes should provide for "donor country content" and regional cumulation.

MALTA

Regional cumulation discriminates against countries which are not associated with, or members of, regional groupings.

SRI LANKA

- The need for harmonization, especially in regard to the percentage criterion used exclusively for determination of origin, is supported by an extensive review of the current diversities and complexities contained in the percentage criterion used by Australia, Canada, New Zealand and the United States. The points made correspond with those described in the secretariat report TD/B/C.5/141.

- The "5 per cent rule" applied in the process criterion to goods of HS chapters 84-91 is too low.

- The system of regional cumulation applied by Japan, EEC and the United States discriminates against preference-receiving countries which are not members of regional groupings.

- The absence of a "donor country content" rule in the EEC, EFTA and the United States' rules prevents some Sri Lankan products from obtaining GSP. Examples are raw tobacco imported from Belgium and manufactured into cigars for return to the same country, and textile fabrics imported from EEC, EFTA and the United States and re-exported to those countries after processing.

- The exclusion of certain products from the coverage of some GSP schemes has caused uncertainty for exporters.

VENEZUELA

All preference-giving countries should apply the "donor country content" rule and regional cumulation.